

**A Datin Seri Rosmah bt Mansor v Peguam Negara/Pendakwa
Raya Malaysia & Ors**

**B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL
NO W-01(IM)-684-09 OF 2022
HANIPAH FARIKULLAH, CHE MOHD RUZIMA AND SEE MEE
CHUN JJCA
4 AUGUST 2023**

**C *Civil procedure — Judicial review — Application for leave — High Court
dismissed ex parte application for leave for judicial review — Appeal against
decision — Whether there had been compliance with O 53 r 3(6) of Rules of Court
2012 — Whether there could be extension of time granted***

**D On 24 June 2022, the appellant as the applicant had filed an ex parte
application for leave for judicial review (‘the JR application’) seeking a total of
25 reliefs. In the main, the reliefs sought were for: (a) a declaration that the
appointment of the third respondent ie Datuk Seri Gopal Sri Ram (‘GSR’) as
**E senior deputy prosecutor in two cases (‘the Solar case’) vide three fiats was ultra
vires, illegal, irregular and defective; (b) an order of certiorari to quash the
appointment of GSR as senior deputy prosecutor; (c) a declaration that the
Solar case proceedings from 15 November 2018 to the close of the prosecution
case and to date was null and void and a mistrial; and (d) a declaration that the
**F appellant be acquitted and discharged from all charges under s 16(a)(A) of the
Malaysian Anti-Corruption Act 2009 in the Solar case. The fiats were dated
8 July 2020 (‘the first fiat’), 11 May 2021 (‘the second fiat’) and 21 May 2021
(‘the third fiat’). On 8 July 2020 the appellant had filed an application for the
production of GSR’s letter of appointment to conduct the criminal
**G prosecution for the Solar case. The application was dismissed and an appeal was
filed. On 8 April 2021, by consent in the Court of Appeal, a copy of the first fiat
was given to the appellant. On 6 May 2021, the appellant filed two notices of
motion pivoted on the first fiat to seek declarations that GSR’s appointment as
senior deputy prosecutor under the first fiat was illegal, irregular and defective;
**H that GSR’s appointment could not be made retrospectively; that the first fiat
was invalid as it was signed by the current Attorney General and not the
previous Attorney General; and that the proceedings were null and void and a
mistrial. The applications were dismissed by the High Court which were
appealed against. At the Court of Appeal, a preliminary objection (‘PO’) was
**I raised as to whether the High Court exercising its criminal jurisdiction had the
power to grant the declaratory reliefs sought by the appellant. The Court of
Appeal found merit in the PO and dismissed the appeals. The appellant
appealed and on 27 May 2022, the Federal Court dismissed the appeal. The
appellant filed the JR application but it was dismissed by the High Court on************

the PO of non-compliance with O 53 r 3(6) of the Rules of Court 2012. Hence, this appeal.

Held, dismissing the appeal:

- (1) The grounds of the JR application could not possibly have arisen on the date when the appellant was charged on 15 November 2018 as the appellant had yet to have sight of the first fiat. The grounds of application would have arisen on 8 April 2021 when the appellant having sighted the first fiat. Even if the date of the production of the first fiat on 8 April 2021 was not to be considered due to the existence of the third fiat dated 21 May 2021 which was disclosed to the appellant on that day, the appellant would still be out of time. Taking either date of 8 April 2021 or 21 May 2021, the judicial review being mandated to be made within three months from that date, the appellant was found to be out of time. The appellant was therefore out of time in filing the JR application where the time prescribed was fundamental (see paras 21–24 & 30).
- (2) The appellant need not have waited for the outcome of the appeal to the Federal Court. The appellant should have proceeded by judicial review then and would not be precluded from the notion of duplicity and multiplicity of the criminal applications. Therefore, the date of 27 May 2022 could not possibly be the date within which the prescribed three months period started. Further, the decision of the Federal Court order dated 27 May 2022 could not possibly be the date for the purpose of ‘when the decision was first communicated’. That decision was not the impugned decision as what was being challenged by the JR application was the legality of GSR’s appointment which the appellant knew of, at the latest by 21 May 2021 insofar as the third fiat was concerned (see paras 36 & 39–41).
- (3) The reason advanced by the appellant ie the awaiting of the outcome of the Federal Court decision was not a good reason for the same reasons on why the date of 27 May 2022 could not be the date when the decision, by which the appellant was aggrieved, was communicated to her. There was thus no material before the court and the court below for the exercise of discretion to grant any extension of time (see paras 46 & 48).

[Bahasa Malaysia summary]

Pada 24 Jun 2022, perayu sebagai pemohon telah memfailkan permohonan ex parte untuk kebenaran semakan kehakiman (‘permohonan SK’) memohon sejumlah 25 relief. Pada dasarnya, relief yang dipohon adalah untuk: (a) pengisytiharan bahawa pelantikan responden ketiga iaitu Datuk Seri Gopal Sri Ram (‘GSR’) sebagai timbalan pendakwa raya kanan dalam dua kes (‘kes *Solar*’) melalui tiga fiat adalah ultra vires, menyalahi undang-undang, tidak teratur dan cacat; (b) perintah certiorari untuk membatalkan pelantikan GSR

- A sebagai timbalan pendakwa raya kanan; (c) pengisytiharan bahawa prosiding kes *Solar* dari 15 November 2018 hingga penutupan kes pendakwaan dan sehingga kini adalah terbatal dan tidak sah dan perbicaraan salah; dan
- B (d) pengisytiharan bahawa perayu dibebaskan dan dilepaskan daripada semua pertuduhan di bawah s 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 dalam kes *Solar*. Fiat-fiat adalah bertarikh 8 Julai 2020 ('fiat pertama'), 11 Mei 2021 ('fiat kedua') dan 21 Mei 2021 ('fiat ketiga'). Pada 8 Julai 2020 perayu telah memfailkan permohonan untuk dibekalkan surat pelantikan GSR untuk menjalankan pendakwaan jenayah bagi kes *Solar*. Permohonan telah ditolak dan rayuan telah difailkan. Pada 8 April 2021,
- C dengan persetujuan di Mahkamah Rayuan, satu salinan fiat pertama telah diberikan kepada perayu. Pada 6 Mei 2021, perayu memfailkan dua notis usul berdasarkan pada fiat pertama untuk mendapatkan pengisytiharan bahawa pelantikan GSR sebagai timbalan pendakwa raya kanan di bawah fiat pertama adalah menyalahi undang-undang, tidak teratur dan cacat; bahawa pelantikan
- D GSR tidak boleh dibuat secara retrospektif; bahawa fiat pertama adalah tidak sah kerana ia ditandatangani oleh Peguam Negara semasa dan bukan Peguam Negara sebelumnya; dan bahawa prosiding itu adalah terbatal dan tidak sah dan satu perbicaraan salah. Permohonan telah ditolak oleh Mahkamah Tinggi yang dirayu terhadapnya. Di Mahkamah Rayuan, bantahan awal ('BA') telah
- E dibangkitkan sama ada Mahkamah Tinggi yang menjalankan bidang kuasa jenayahnya mempunyai kuasa untuk memberikan relief pengisytiharan yang dipohon oleh perayu. Mahkamah Rayuan mendapati merit dalam BA dan menolak rayuan. Perayu membuat rayuan dan pada 27 Mei 2022, Mahkamah Persekutuan menolak rayuan itu. Perayu memfailkan permohonan SK tetapi ia
- F telah ditolak oleh Mahkamah Tinggi atas BA tidak mematuhi A 53 k 3(6) Kaedah-Kaedah Mahkamah 2012. Oleh itu, rayuan ini.

Diputuskan, menolak rayuan:

- G (1) Alasan permohonan SK tidak mungkin timbul pada tarikh perayu didakwa pada 15 November 2018 kerana perayu masih belum melihat fiat pertama. Alasan permohonan akan timbul pada 8 April 2021 apabila perayu telah melihat fiat pertama. Jikapun tarikh pengeluaran fiat pertama pada 8 April 2021 tidak dipertimbangkan kerana wujudnya fiat
- H ketiga bertarikh 21 Mei 2021 yang telah didedahkan kepada perayu pada hari tersebut, perayu akan tetap berada di luar masa yang ditetapkan. Mengambil tarikh sama ada 8 April 2021 atau 21 Mei 2021, semakan kehakiman perlu dibuat dalam tempoh tiga bulan dari tarikh tersebut, perayu didapati telah di luar masa yang ditetapkan. Oleh itu, perayu
- I adalah di luar masa yang ditetapkan dalam memfailkan permohonan SK di mana masa yang ditetapkan adalah penting (lihat perenggan 21–24 & 30).
- (2) Perayu tidak perlu menunggu keputusan rayuan ke Mahkamah Persekutuan. Perayu sepatutnya meneruskan semakan kehakiman pada

masa itu dan tidak akan terhalang dengan konsep kependuaan dan kepelbagaian permohonan jenayah. Oleh itu, tarikh 27 Mei 2022 tidak mungkin menjadi tarikh dalam tempoh tiga bulan yang ditetapkan bermula. Selanjutnya, keputusan perintah Mahkamah Persekutuan bertarikh 27 Mei 2022 tidak mungkin menjadi tarikh untuk tujuan ‘ketika keputusan itu mula-mula dimaklumkan’. Keputusan itu bukanlah keputusan yang dipersoalkan kerana apa yang dicabar oleh permohonan SK adalah kesahihan pelantikan GSR yang perayu tahu, selewat-lewatnya pada 21 Mei 2021 setakat berkenaan fiat ketiga (lihat perenggan 36 & 39–41).

- (3) Alasan yang dikemukakan oleh perayu iaitu menunggu keputusan Mahkamah Persekutuan bukanlah alasan yang munasabah atas sebab yang sama mengapa tarikh 27 Mei 2022 tidak boleh menjadi tarikh apabila keputusan, yang mana perayu terkilan, dimaklumkan kepadanya. Oleh itu, tiada material di hadapan mahkamah dan mahkamah bawahan untuk menjalankan budi bicara untuk memberikan sebarang lanjutan masa (lihat perenggan 46 & 48).]

Cases referred to

- Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 3 MLJ 145, FC (refd)
Dato’ Sri Mohd Najib bin Tun Hj Abdul Razak v Attorney General & Ors [2020] 3 MLJ 114, FC (refd)
Menteri Besar Negeri Pahang Darul Makmur v Seruan Gemilang Makmur Sdn Bhd [2010] 4 MLJ 360, CA (refd)
P Maradeveran a/l Periasamy & Ors v Suruhanjaya Pilihan Raya & Anor [2019] 2 MLJ 70, CA (refd)
PP v Rosmah bt Mansor [2022] 11 MLJ 801, HC (refd)
Wong Kin Hoong & Anor (suing for themselves and on behalf all of the occupants of Kampung Bukit Koman, Raub, Pahang) v Ketua Pengarah Jabatan Alam Sekitar & Anor [2013] 4 MLJ 161, FC (refd)

Legislation referred to

- Malaysian Anti-Corruption Act 2009 s 16(a)(A)
 Rules of Court 2012 O 53 r 3(2), 3(6), 3(7)
 Rules of the High Court 1980 (repealed by Rules of Court 2012) O 53 r 3

Appeal from: *Datin Seri Rosmah bt Mansor v Peguam Negara/Pendakwa Raya Malaysia & Ors* [2022] MLJU 2223 (High Court, Kuala Lumpur)

Jagjit Singh (with Akberdin bin Abdul Kader, Azrul Zulkifli Stork, Meor Hafiz bin Salehan, Puteri Ummi Kartini Abd Latiff and Ardy Suffian bin Akberdin) (Akberdin & Co) for the appellant.

A *Shamsul bin Bolhassan (with Liew Horng Bin) (Attorney General's Chambers) for the respondents.*

See Mee Chun JCA (delivering judgment of the court):

B INTRODUCTION

C [1] On 24 June 2022, the appellant as the applicant had filed an ex parte application for leave for judicial review ('JR') seeking a total of 25 reliefs. The JR application can be found in encl 3/109–125, the statement pursuant to O 53 r 3(2) of the Rules of Court 2012 (RC 2012) can be found in encl 3/126–172 and the affidavit in support affirmed on 24 June 2022 can be found in encl 4/88–150.

D [2] In the main, the reliefs sought were for a declaration that the appointment of the third respondent ('Gopal Sri Ram, GSR') as senior deputy prosecutor ('senior DPP') in *PP v Rosmah bt Mansor* [2022] 11 MLJ 801 ('the Solar case') vide three fiats is ultra vires, illegal, irregular and defective; an order of certiorari to quash the appointment of GSR as senior DPP, a declaration that the *Solar* case proceedings from 15 November 2018 to the close of the prosecution case and to date is null and void and a mistrial and a declaration that the applicant be acquitted and discharged from all charges under s 16(a)(A) of the Malaysian Anti-Corruption Act 2009 in the *Solar* case.

F [3] The fiats in question are fiat dated 8 July 2020 (first fiat, encl 13/168–169), oral fiat as averred in the affidavit in reply (No 2) affirmed by Tommy Thomas dated 11 May 2021 (second fiat, encl 13/170–177) and fiat dated 21 May 2021 given by the first respondent (third fiat, encl 13/178).

G [4] The High Court had dismissed the application for leave on the preliminary objection ('PO') of non-compliance with O 53 r 3(6) of the RC 2012.

THE APPEAL

H [5] Before us, the appellant argued the appeal principally on the core issue of whether the appellant had filed the application within the time as prescribed by O 53 r 3(6) of the RC 2012.

I THE BACKGROUND FACTS

[6] We find it pertinent to set down the background facts pertaining to applications made by the appellant in the course of the criminal proceedings in the *Solar* case which will be relevant for the consideration of the appeal.

[7] These background facts and the dates in question are not disputed. A

Application to produce GSR's letter of appointment

[8] On 8 July 2020, the appellant had filed an application in Criminal Application No MTJ (2)-44-132-07 of 2020 for the production of GSR's letter of appointment to conduct the criminal prosecution for the *Solar* case. The application was dismissed on 19 August 2020 whereby an appeal was filed. B

[9] On 8 April 2021, by consent in the Court of Appeal, a copy of the first fiat was given to the appellant. C

Applications on the validity of GSR's appointment

[10] On 6 May 2021, the appellant filed two notices of motion which were WA-114-05 of 2021 and WA-117-05 of 2021. These applications were pivoted on the first fiat and by and by were to seek declarations that GSR's appointment as senior DPP under the first fiat was illegal, irregular and defective; that GSR's appointment could not be made retrospectively; that the first fiat was invalid as it was signed by the current Attorney General and not the previous Attorney General; and that the proceedings were null and void and a mistrial. D E

[11] The applications were dismissed by the High Court on 24 September 2021 which were thereupon appealed against. F

[12] At the Court of Appeal, a PO was raised as to whether the High Court exercising its criminal jurisdiction has the power to grant the declaratory reliefs sought by the appellant. G

[13] On 6 December 2021, the Court of Appeal found merit in the PO and dismissed the appeals on the jurisdictional issue and further stated it was not expressing any opinion on the legality or propriety of the orders appealed against. H

[14] The appellant appealed to the Federal Court. On 27 May 2022, the Federal Court dismissed the appeal. The order (encl 13/69-70), *inter alia*, stated:

... bahawa rayuan Perayu adalah ditolak maka keputusan oleh Mahkamah Rayuan yang membenarkan Bantahan Awal Responden bahawa Mahkamah Jenayah tiada bidangkuasa untuk memberi relif-relif bagi perintah-perintah deklarasi ... adalah disahkan. I

A OUR DECISION

Preliminaries

B [15] We had inquired from parties on the position of GSR, who has since regrettably passed on. Parties were in consensus that the appeal could still proceed. We agree that the appeal can still proceed despite GSR's demise and in particular with the senior federal counsel ('SFC') that this matter still being at the leave stage, that the Attorney General's Chambers could represent GSR who was its senior DPP.

C [16] SFC then attempted to raise the issue of whether, with GSR's demise, the appeal had been rendered academic. We take the position that the thrust of the application on the legality of the fiats and the proceedings in the *Solar* case would not render the appeal academic as these are live issues.

Whether there has been compliance with O 53 r 3(6)

D [17] Order 53 r 3(6) of the RC 2012 provides as follows:

E An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of application first arose or when the decision is first communicated to the applicant.

F [18] The grounds of judgment of the High Court ('GOJ') can be found in encl 13/23–59. In para 40 (p 45), the High Court judge ('HCJ') stated as follows:

G [40] Taking 'when the grounds of the application first arose' in O 53 r 3(6) of the ROC, it is my considered view that the grounds of the application first arose on 15 November 2018 when the applicant was charged in the sessions court and/or where there is no production of the fiat at all or on 8 April 2021 when the prosecution consented and produced a copy of the letter of appointment for the applicant's perusal, where it was revealed that Datuk Gopal Sri Ram's fiat was only for 1MDB related cases.

H [19] In considering when the grounds of the JR application first arose, the HCJ took the dates to be 15 November 2018 which is the date when the appellant was charged in the sessions court or 8 April 2021 when a copy of GSR's letter of appointment was produced. Taking either date and since the JR application was only filed on 24 June 2022, it was clearly beyond the three months period.

I

WHEN THE GROUNDS OF JR APPLICATION FIRST AROSE

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[20] We will now consider what are the dates that can be taken as triggering when the grounds of the JR application first arose.

Date of 15 November 2018

B

[21] We do not find that the grounds of the JR application could possibly have arisen on the date when the appellant was charged on 15 November 2018. As of that date, the appellant had yet to have sight of the first fiat and it was only on 8 April 2021 when by consent in the Court of Appeal, a copy of the first fiat was duly produced to the appellant.

C

Date of 8 April 2021

[22] We find that in fact it should be the date of 8 April 2021 when the appellant having sighted the first fiat would have been aware that the fiat was in their own words invalid thereby rendering the appointment of GSR illegal, irregular and defective and the proceedings of the *Solar* case null and void and a mistrial. The grounds of application would have arisen on 8 April 2021. The appellant would be out of time.

D

E

Date of 21 May 2021

[23] Even if the date of the production of the first fiat on 8 April 2021 is not to be considered due to the existence of the third fiat dated 21 May 2021 which was disclosed to the appellant on that day and which according to the appellant suffered the same infirmities, the appellant would still be out of time.

F

The appellant is out of time

G

[24] Taking either date of 8 April 2021 or 21 May 2021, the judicial review being mandated to be made within three months from that date, we find the appellant to be out of time.

H

[25] In *Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 3 MLJ 145, the Federal Court had laid out the provisions of the then O 53 r 3 of the Rules of the High Court 1980 and prefaced it by observing the stringent conditions or rules imposed and then at p 155 as follows:

I

[17] Set against the conditions laid down above against the facts of this instant case, one will notice that the appellant is handicapped by limitation of time (among other things) in bringing an application under O 53 r 3(6) of the RHC for judicial review.

A [26] At pp 154 and 155 the rationale for the stringent conditions, including that of time, was explained.

B [27] In *Menteri Besar Negeri Pahang Darul Makmur v Seruan Gemilang Makmur Sdn Bhd* [2010] 4 MLJ 360 (Court of Appeal), there was a majority view on time within the context of a JR application. This may be seen at p 367, para 1, where Zaleha Zahari JCA (as she then was) stated she was not of the same view with the other two Court of Appeal judges on whether the applicant was within time.

C [28] The majority view on time was expressed by Jeffrey Tan JCA (as he then was) at pp 382, 383 and 385 as follows:

[58] To compound the error, the respondent had not complied with O 53 r 3(6) of the RHC, which reads as follows:

D An application for judicial review shall be made promptly and in any event within 40 days from the date when grounds for the application first arose or when the decision is first communicated to the applicant provided that the Court may, upon application and if it considers that there is a good reason for doing so, extend the period of 40 days.

E ...
 [60] It is imperative that an application for judicial review is made within time (*Ahmad Jefri Mohd Jahri v Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 3 MLJ 145; [2008] 6 CLJ 473). Three recent authorities illustrate how those prescribed 40 days had been calculated. ...

F ...
 [63] Given that there was no direction that payment was suspended, the duty to pay arose upon service of the s 33 certificate, literally upon presentation thereof. On the facts, the grounds for the application first arose on 7 April 2008, when service of the s 33 certificate was not met with payment. Filed more than six months later on 15 October 2008 without any extension of the said 40 days, the application for judicial review was way out of time. There was a patent failure to comply with rules of court, and the order of mandamus should have been there and then refused.

G
 H [29] In *Wong Kin Hoong & Anor (suing for themselves and on behalf all of the occupants of Kampung Bukit Koman, Raub, Pahang) v Ketua Pengarah Jabatan Alam Sekitar & Anor* [2013] 4 MLJ 161 the same was reiterated by the Federal Court at p 171, para 30, 'that the time frame in applying for judicial review prescribed by the Rules is fundamental'.

I [30] The appellant is therefore out of time in filing the JR application where the time prescribed is fundamental.

CONTENTIONS OF THE APPELLANT

A

[31] We now go into the appellants' contention as to why it is without merit.

[32] The appellant had strenuously submitted that it was within time, taking the order of the Federal Court dated 27 May 2022 as the date within which the three months the JR application could be made. This was the date when the decision of the Federal Court was first communicated to the appellant.

B

[33] It was further submitted that the appellant had to let the appeal process take its course until the Federal Court confirmed the Court of Appeal's decision that the criminal court had no jurisdiction to make declaratory orders. This meant the appellant had to turn to the civil court for its judicial review application which was filed within 28 days from the date of the Federal Court's decision. The application was therefore within the prescribed time pursuant to O 53 r 3(6) of the RC 2012.

C

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[34] Reference was made to *Menteri Besar Negeri Pahang Darul Makmur* at held (2) by Zaleha Zahari JCA as she then was, where the respondent there only resorted to the judicial review application for mandamus to overcome the defendants' recalcitrance to pay the judgment sum and the respondent only commenced the application after all appeals against the said judgment had been disposed of. There, the respondent was said to have acted promptly and within the timeline of the then O 53 r 3(6).

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[35] We had earlier referred to that case and noted that this was the minority view. We had set out the relevant paragraphs of the majority view. We reiterate the majority view was that the JR application filed more than six months later was way out of time (para 63, p 385). In fact, at para 60, p 383, it was said that 'it is imperative that an application for judicial review is made within time'.

G

[36] Taking the appellant's submission as it stands, this would mean that the Court of Appeal's decision dated 6 December 2021 should be the date the decision was first communicated. This is because as of that date, the appellant knew the challenge to GSR's appointment premised on the legality of the fiats and all the other reliefs being sought, could not be granted by a criminal court. The appellant need not have waited for the outcome of the appeal to the Federal Court.

H

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[37] This is because the law is clear by virtue of the decision of this court in *Dato' Sri Mohd Najib bin Tun Hj Abdul Razak v Attorney General & Ors* [2020] 3 MLJ 114 and confirmed by the Federal Court as follows at p 134:

- A [48] The nature and jurisdiction of the judicial review applications and the disqualification motions before the criminal court are clearly separate and distinct. The former is a public law remedy to challenge the legality of AG's appointment of GSR. The latter is a private law remedy to seek GSR to be disqualified on grounds of conflict, bias and unfairness. The issue of multiplicity and duplicity does not arise as the remedies sought are different.
- B

- [38] We note that this case of *Dato' Sri Mohd Najib* and the Federal Court order in question were in the bundle of authorities in the Court of Appeal case from which the decision of 6 December 2021 emanated from. This was confirmed by the appellant's counsel.
- C

- [39] The appellant should have proceeded by judicial review then and would not be precluded from the notion of duplicity and multiplicity of the criminal applications.
- D

[40] Therefore, the above demonstrates why the date of 27 May 2022 cannot possibly be the date within which the prescribed three months period starts.

- E [41] Further, the decision of the Federal Court order dated 27 May 2022 cannot possibly be the date for the purpose of 'when the decision was first communicated'. That decision is not the impugned decision as what is being challenged by the JR application is the legality of GSR's appointment which the appellant knew of, at the latest by 21 May 2021 insofar as the third fiat is concerned.
- F

- [42] In *P Maradeveran all Periasamy & Ors v Suruhanjaya Pilihan Raya & Anor* [2019] 2 MLJ 70, the issue was on when time started to run for the purpose of O 53 r 3(6), whether it was from the date of the *gazette* notification or when the decision was communicated on the alteration of the constituency boundaries. It was held that it had to be the latter date, as that was the date when the decision was first communicated. The *gazette* notification was not the communication of the decision when in the first place, there was no mention of the locality alteration exercise. The following was said at p 80:
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- H [29] We found merit in the argument. Since the decision by the Election Commission to alter the constituency boundaries was only conveyed to the appellants through the respondents' letters dated 3 August 2016, time must begin to run from this date and not from the date of the *gazette* notification. This has to be so because this was the date when the decision was 'first communicated' to the appellants. The three-month limitation period therefore began to run from 3 August 2016.
- I

[30] The notification in the *gazette* was not 'communication' of the decision to the appellants within the meaning of O 53 r 3(6) of the Rules. In the first place, there was no mention of the locality alteration exercise at all in the *gazette*. What was not

in the *gazette* could not have been ‘communicated’ to the appellants at any point of time. A

[43] Similar to our appeal, it bears emphasis that the ‘decision first communicated’ cannot possibly be the Federal Court’s order dated 27 May 2022 as that is not being challenged at all, but the legality of GSR’s appointment which again points back to when the appellant knew, at the very latest of the third fiat, by 21 May 2021. B

EXTENSION OF TIME C

[44] Arising from the above finding that the appellant is out of time, we now consider whether there can be an extension of time granted. Order 53 r 3(7) of the RC 2012 provides as follows:

The Court may, upon an application, extend the time specified in rule 3(6) if it considers there is a good reason for doing so. D

[45] We note that the appellant has sought an extension of time in para 23 of its JR application. E

[46] The good reason advanced by the appellant was the awaiting of the outcome of the Federal Court decision. We find this not to be a good reason for the same reasons on why the date of 27 May 2022 cannot be the date when the decision by which the appellant is aggrieved, was communicated to her. F

[47] As stated in *Wong Kin Hoong* at p 168:

[18] A common factor in the above provisions is that an application for leave for judicial review must be made promptly but the court may upon application, and if it considers that there is good reason for doing so, extend it. Thus, whether an extension of time ought to be granted or otherwise is an exercise of judicial discretion. And it is a well-settled principle that an appellate court will rarely interfere with the court exercise of judicial discretion unless it is clearly satisfied that the discretion had been exercised on a wrong principle G

[48] There is thus no material before this court and the court below for the exercise of discretion to grant any extension of time. H

CONCLUSION I

[49] For the reasons given above, we find no merit in the appeal. The appeal is dismissed with costs of RM10,000 to the first and second respondents.

A *Appeal dismissed.*

Reported by Nabilah Syahida Abdullah Salleh

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